Ith

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,883	10/19/2001	John Haughey	13791	7341

293 7590 11/16/2005

Ralph A. Dowell of DOWELL & DOWELL P.C.
2111 Eisenhower Ave.
Suite 406
Alexandria, VA 22314

EXAMINER	
VO, LILIAN	
ART UNIT	**PAPER NUMBER**
2195	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/981,883	**Applicant(s)** HAUGHEY, JOHN	
	Examiner Lilian Vo	**Art Unit** 2195	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: *None*.
   Claim(s) objected to: *None*.
   Claim(s) rejected: *6, 8, 11, 13 - 26 and 32 - 41*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Lilian Vo
Examiner
Art Unit: 2195

Continuation of 11. does NOT place the application in condition for allowance because: the rejection was deemed proper and applicant's argument are not persuasive for the reasons set forth below:

Regarding applicant's remark that that "...the examiner's position cannot serve as a basis for 'a new ground of rejection necessitated by the applicant's amendment of the claims'" (page 7, last paragraph - page 8, 1st paragraph), applicant to note that the amendment of claim 6, even just by incorporating features of its base claim, changed the scope of the claim and thus required further consideration by the examiner. For that reason, applicant's amendment necessitated the new ground of rejection and the finality of the previous office action is proper. Also, upon further consideration, the examiner noted that the limitation from the original claim 6 can be found in Peters and determined that the secondary reference, Shi is not necessary.

Regarding applicant's argument that Peters does not disclose or suggest the limitation selecting an incomplete task from a set of at least one incomplete task on the basis of an expected duration for that task (page 10, 2nd and 4th paragraphs), the examiner disagrees. Peters discloses such teaching in col. 9, lines 5 - 26 in which the task is executed for a predetermined period of time. Thus, in order to execute the task, it must be selected first. Therefore, the selecting step is considered inherent. With respect to the term expected duration for that task, Peters discloses the task is executed for a predetermined period of time, which is determined by the time-slicing scheme of the operating system. Claim only recite the limitation expected duration in which a predetermined period of time from Peters can read on it.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the expected duration is the expected period of time needed for the task to reach completion, page 10, 4th paragraph) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).
Further, while it is appropriate to use the specification to determine what applicants intends a term to mean, a positive limitation from the specification cannot be read into a claim that does not impose that limitation. A broad interpretation of a claim by Office personnel will reduce the possibility that the claim, when issued, will be interpreted more broadly than is justified or intended. Applicants can always amend a claim during prosecution to better reflect the intended scope of the claim.

With respect to applicant's argument regarding claim 19 (page 11, last paragraph - page 12, 1st paragraph), the same responses as stated in claim 6 above will be applied. Furthermore, although Shi reference was determined as not necessary in the rejection of the feature in claim 6, it doesn't mean Shi does not teach or suggest such feature. Applicant is directed to Shi's col. 15, lines 25 - 34 where this feature is shown.

With respect to applicant's argument that neither Peters nor Kullick disclose or suggest the limitation of claim 22 (page 14, 2nd - 5th paragraph), the examiner disagrees. Firstly, the examiner did not equate a newly-started software to an existing incomplete task. The old version program that is not running (incomplete) is what the examiner considered as equivalent to an existing incomplete task.

Regarding applicant's argument that neither Peters nor Fukuda discloses or suggests the limitation of selecting an incomplete task from the set on the basis of a number of times that the task has been previously suspended (page 15, 8th paragraph), the examiner disagrees. Claim merely recites the step of selecting a task on a basis of a number of times the task has been previously suspended. Thus, Fukuda discloses the method for performing suspend and resume operations of the task in which the number of resume operations with respect to the determined program task is counted for selecting to run (col. 2, line 59 - col. 3, line 10). In other words, it is resumed because it has been suspended, which read on the claim. Therefore, it would have been obvious for one of an ordinary skill in the art, at the time the invention was made, to incorporate the feature in Fukuda's with Peters' so that tasks can be serviced/selected to run on the basis of number of resume operations (Fukuda: col. 3, lines 2 - 10).
With respect to applicant's remark that the number of times the program task has been suspended is not equivalent to the number of times a program task has been resumed because a given program task can be suspended and never resumed (page 16, 1st paragraph), applicant is arguing a feature that are not recited in the rejected claim, which is improper.

With respect to applicant's argument regarding claims 32, 38, 39, 40 and 41 (page 16, last paragraph, page 17, 4th paragraph), the same responses as stated for claim 8 above will be applied. .